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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,745	11/12/2003	Vivek Y. Reddy	035249/US-475387-73	7530

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DORSEY & WHITNEY LLP  
INTELLECTUAL PROPERTY DEPARTMENT  
250 PARK AVENUE  
NEW YORK, NY 10177

EXAMINER

MEHTA, BHISMA

ART UNIT PAPER NUMBER

3767

DATE MAILED: 11/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/706,745

Applicant(s)

REDDY ET AL.

Examiner

Bhisma Mehta

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) 1-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 27-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/12/03, 1/30/06, 6/05/06</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group II in the reply filed on October 30 2006 is acknowledged. The traversal is on the ground(s) that Group I and Group II are not distinct from one another because the claimed inventions recited in claims 1-26 and claims 27-52 recite substantially the same subject matter. This is not found persuasive because the arrangement claims of Group II (i.e., claims 27-52) are drawn to a product and contain only functional language with regards to where the fluid is introduced and the energy is transmitted. The arrangement as claimed can be used to practice a materially different process such as dialysis as the claimed structure of the arrangement is merely drawn to a fluid delivery system and an energy source. Furthermore, regarding Applicant's remarks on page 3 of the reply filed on October 30 2006, the method claims (i.e., claims 1-26) and the apparatus claims (i.e., claims 27-52) do not recite substantially the same or similar structure as there is no structure recited in the method claims.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 1-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on October 30 2006.

***Specification***

3. The disclosure is objected to because of the following informalities: There is a grammatical error in the phrase "delivering the energy 160 the entire heart" in line 18 of page 7. Appropriate correction is required.

***Claim Objections***

4. Claims 28-36 and 38-52 are objected to because of the following informalities: It had been noted on page 4 of the Requirement for Restriction/Election that the dependency of claims 28-36 and claims 37-52 was unclear. For the purpose of this examination, claims 28-36 have been treated to depend from claim 27 and claims 38-52 have been treated to depend from claim 37. The dependency of the claims needs to be corrected. Because of the lack of clarity of the dependency of the claims, claims 29, 35, 36, 42, 45, 51, and 52 lack antecedent basis for "the compound", "the scar tissue", "the liquid", and "the at least one predetermined criteria".

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent

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granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 27-52 are rejected under 35 U.S.C. 102(b) as being anticipated by Lardo et al (Patent Application Publication No. 2002/0095197). Lardo et al disclose an arrangement for treating cardiac arrhythmia comprising a fluid delivery system (4) adapted to systemically or locally introduce a fluid to a target area of a heart and an energy source (3) adapted to transmit energy in the form of light to at least one portion of the target area. In paragraph [0028], Lardo et al teach using a photodynamic or photosensitizing compound. In paragraph [0027], Lardo et al teach activation of the compound causes damage to those cells in which the compound has been localized. In paragraph [0033], Lardo et al teach the energy source may be used to determine electrical activity within the heart.

7. Claims 27-53 are rejected under 35 U.S.C. 102(e) as being anticipated by Pless (U.S. Patent No. 6,811,562). In lines 47-59 of column 9, Pless discloses an arrangement for treating cardiac arrhythmia comprising a fluid delivery system adapted to systemically or locally introduce a fluid to a target area of a heart and an energy source (300) adapted to transmit energy in the form of light to at least one portion of the target area. In lines 1-18 of column 9, Pless teaches using a photodynamic or photosensitizing compound and teaches that activation of the compound causes damage to those cells in which the compound has been localized. In lines 47-60 of column 2, Pless teaches energy source may be used to determine electrical activity within the heart.

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**Conclusion**

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Tu et al (U.S. Patent No. 6,241,692), Arless et al (U.S. Patent No. 6,241,718), and Hung et al (U.S. Patent No. 6,391,026) disclose arrangements comprising a fluid delivery system and an energy source.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bhisma Mehta whose telephone number is 571-272-3383. The examiner can normally be reached on Mon through Fri, 7:30 am to 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on 571-272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BM 

KEVIN C. SIRMONS  
SUPERVISORY PATENT EXAMINER

